

# HOUSE BILL No. 1259

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 9-32-13.

**Synopsis:** Unfair practices concerning motor vehicle dealers. Amends current law concerning unfair practices of a motor vehicle manufacturer or distributor, and provides that certain actions relating to parts and labor for motor vehicles are unfair practices.

**Effective:** July 1, 2016.

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## Speedy

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January 11, 2016, read first time and referred to Committee on Roads and Transportation.

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Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## HOUSE BILL No. 1259

A BILL FOR AN ACT to amend the Indiana Code concerning motor vehicles.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 9-32-13-15, AS ADDED BY P.L.92-2013,  
2 SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2016]: Sec. 15. (a) It is an unfair practice for a manufacturer  
4 or distributor to fail to compensate a dealer ~~at the posted labor dealer's~~  
5 **retail** rate for the work and services the dealer is required to perform  
6 in connection with the dealer's delivery and preparation obligations  
7 under any franchise, or fail to compensate a dealer **anything less than**  
8 ~~the posted hourly labor dealer's retail~~ rate for labor and ~~other expenses~~  
9 ~~incurred by the dealer parts~~ under the manufacturer's warranty  
10 agreements as long as the ~~posted dealer's retail~~ rate is reasonable.  
11 Judgment of the reasonableness includes consideration of charges for  
12 similar repairs by ~~comparable~~ **similarly situated** repair facilities in ~~the~~  
13 ~~local area as well as mechanic's wages and fringe benefits.~~ **Indiana.**  
14 (b) This section does not authorize a manufacturer or distributor and  
15 its franchisees in Indiana to establish a uniform hourly labor  
16 reimbursement rate effective for the entire state.  
17 (c) **This section does not apply to manufacturers or distributors**



1 of manufactured housing or recreational vehicles.

2 SECTION 2. IC 9-32-13-15.5 IS ADDED TO THE INDIANA  
3 CODE AS A NEW SECTION TO READ AS FOLLOWS  
4 [EFFECTIVE JULY 1, 2016]: Sec. 15.5. (a) This section does not  
5 apply to manufacturers or distributors of manufactured housing  
6 or recreational vehicles.

7 (b) It is an unfair practice for a manufacturer or distributor to  
8 fail to compensate a dealer anything less than the dealer's retail  
9 rates for parts and labor the dealer uses in performing the  
10 warranty services of the manufacturer or distributor, or for a  
11 manufacturer or distributor of a separate vehicle component or  
12 major vehicle assembly that is warranted independently of the  
13 motor vehicle to fail to compensate a dealer anything less than the  
14 dealer's retail rate for the parts and labor the dealer uses in  
15 performing the warranty services of the manufacturer or  
16 distributor. The dealer's retail rate for parts must be a percentage  
17 determined by dividing the total charges for parts used in  
18 warranty like repairs by the dealer's total cost for those parts  
19 minus one (1) in the lesser of one hundred (100) sequential repair  
20 orders or ninety (90) consecutive days of repair orders. The  
21 dealer's retail rate for labor shall be determined by dividing the  
22 total labor sales for warranty like repairs by the number of hours  
23 that generated those sales in one hundred (100) sequential repair  
24 orders or ninety (90) consecutive days of repair orders. A retail  
25 rate may be calculated only based upon repair orders charged  
26 within one hundred eighty (180) days before the date the dealer  
27 submits the declaration.

28 (c) The dealer's submission for retail rates must include a  
29 declaration of the dealer's retail rates for parts and labor along  
30 with the supporting service repair orders paid by customers. A  
31 manufacturer or distributor may challenge the dealer's declaration  
32 by submitting a rebuttal not later than sixty (60) days after the  
33 date the declaration was received. If the manufacturer or  
34 distributor does not send a timely rebuttal to the dealer, the retail  
35 rate is established as reasonable and goes into effect automatically.

36 (d) If a rebuttal in subsection (c) is timely sent, the rebuttal must  
37 substantiate how the dealer's declaration is unreasonable or  
38 materially inaccurate. The rebuttal must propose an adjusted retail  
39 rate and provide written support for the proposed adjustments. If  
40 the dealer does not agree with the adjusted retail rate, the dealer  
41 may file a complaint with the dealer services division within the  
42 office of the secretary of state.



1 (e) A complaint filed under subsection (d) must be filed not later  
2 than thirty (30) days after the dealer receives the manufacturer's  
3 or distributor's rebuttal. On or before filing a complaint, a dealer  
4 must serve a demand for mediation upon the manufacturer or  
5 distributor.

6 (f) When calculating the retail rate customarily charged by the  
7 dealer for parts and labor under this section, the following work  
8 may not be included:

9 (1) Repairs for manufacturer or distributor special events,  
10 specials, or promotional discounts for retail customer repairs.

11 (2) Parts sold at wholesale.

12 (3) Routine maintenance not covered under a retail customer  
13 warranty, such as fluids, filters, and belts not provided in the  
14 course of repairs.

15 (4) Nuts, bolts, fasteners, and similar items that do not have  
16 an individual part number.

17 (5) Vehicle reconditioning.

18 (g) If a manufacturer or distributor furnishes a part or  
19 component to a dealer at no cost to use in performing repairs  
20 under a recall, campaign service, or warranty repair, the  
21 manufacturer or distributor shall compensate the dealer for the  
22 part or component in the same manner as warranty parts  
23 compensation under this section by compensating the dealer the  
24 average markup on the cost for the part or component as listed in  
25 the manufacturer's or distributor's initial or original price  
26 schedule minus the cost for the part or component.

27 (h) A manufacturer or distributor may not require a dealer to  
28 establish the retail rate customarily charged by the dealer for parts  
29 and labor by an unduly burdensome or time consuming method or  
30 by requiring information that is unduly burdensome or time  
31 consuming to provide, including part by part or transaction by  
32 transaction calculations. A dealer may not declare an average  
33 percentage parts markup or average labor rate more than once in  
34 a twelve (12) month period. A manufacturer or distributor may  
35 perform annual audits to verify that a dealer's effective rates have  
36 not decreased. If a dealer's effective rates have decreased, a  
37 manufacturer or distributor may reduce the warranty  
38 reimbursement rate prospectively. A dealer may elect to revert to  
39 the nonretail rate reimbursement for parts and labor not more  
40 than once in a twelve (12) month period.

41 (i) A manufacturer or distributor is permitted to recover its  
42 costs, as defined under this section, only from a dealer that receives



1 retail reimbursement for parts or labor, or both parts and labor.

2 (j) If a dealer files a complaint with the dealer services division  
3 within the office of the secretary of state, the warranty  
4 reimbursement rate in effect before any mediation or complaint  
5 remains in effect until thirty (30) days after:

6 (1) a final decision has been issued by a court with  
7 jurisdiction; and

8 (2) all appeals have been exhausted.

9 SECTION 3. IC 9-32-13-17, AS ADDED BY P.L.92-2013,  
10 SECTION 78, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
11 JULY 1, 2016]: Sec. 17. (a) It is an unfair practice for a manufacturer  
12 or distributor to:

13 (1) fail to pay a claim made by a dealer for compensation for:

14 (A) delivery and preparation work;

15 (B) warranty work; and

16 (C) incentive payments;

17 not later than thirty (30) days after the claim is approved;

18 (2) fail to approve or disapprove a claim not later than thirty (30)  
19 days after receipt of the claim; or

20 (3) disapprove a claim without notice to the dealer in writing of  
21 the grounds for disapproval.

22 (b) A manufacturer or distributor may:

23 (1) audit a claim made by a dealer; or

24 (2) charge back to a dealer any amounts paid on a false or  
25 unsubstantiated claim;

26 for up to one (1) year after the date on which the claim is paid.  
27 However, the limitations of this subsection do not apply if the  
28 manufacturer or distributor can prove fraud on a claim. A manufacturer  
29 or distributor shall not discriminate among dealers with regard to  
30 auditing or charging back claims.

31 (c) If the motor vehicle dealer has properly submitted the claim  
32 in accordance with the manufacturer's or distributor's warranty  
33 or incentive program guidelines, a manufacturer or distributor  
34 may not deny a claim based solely on a motor vehicle dealer's  
35 incidental failure to comply with a specific claim processing  
36 requirement, including a clerical error or other administrative  
37 technicality that does not call into question the legitimacy of a  
38 claim. A motor vehicle dealer may submit an amended or  
39 supplemental claim within the time and manner required by the  
40 manufacturer for:

41 (1) sales incentives;

42 (2) service incentives;



1           (3) rebates; or  
 2           (4) other forms of incentive compensation;  
 3       for up to sixty (60) days from the date on which such a claim was  
 4       submitted, could have been submitted, or was charged back. For  
 5       purposes of this section, a failure to obtain a required signature  
 6       may not be considered to be a clerical error or administrative  
 7       technicality.

8       SECTION 4. IC 9-32-13-23, AS AMENDED BY P.L.2-2014,  
 9       SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 10      JULY 1, 2016]: Sec. 23. (a) It is an unfair practice for a manufacturer,  
 11      distributor, officer, or agent to do any of the following:

12           (1) Require, coerce, or attempt to coerce a new motor vehicle  
 13           dealer in Indiana to:

14                   (A) change the location of the dealership;

15                   (B) make any substantial alterations to the use of franchises;  
 16                   or

17                   (C) make any substantial alterations to the dealership premises  
 18                   or facilities;

19      if to do so would be unreasonable or would not be justified by  
 20      current economic conditions or reasonable business  
 21      considerations. This subdivision does not prevent a manufacturer  
 22      or distributor from establishing and enforcing reasonable facility  
 23      requirements. However, a motor vehicle dealer may elect to use  
 24      for the facility alteration locally sourced materials or supplies that  
 25      are substantially similar to those required by the manufacturer or  
 26      distributor, subject to the approval of the manufacturer or  
 27      distributor, **which may not be unreasonably withheld.**

28           (2) Require, coerce, or attempt to coerce a new motor vehicle  
 29           dealer in Indiana to divest ownership of or management in  
 30           another line or make of motor vehicles that the dealer has  
 31           established in its dealership facilities with the prior written  
 32           approval of the manufacturer or distributor.

33           (3) Establish or acquire wholly or partially a franchisor owned  
 34           outlet engaged wholly or partially in a substantially identical  
 35           business to that of the franchisee within the exclusive territory  
 36           granted the franchisee by the franchise agreement or, if no  
 37           exclusive territory is designated, competing unfairly with the  
 38           franchisee within a reasonable market area. A franchisor is not  
 39           considered to be competing unfairly if operating:

40                   (A) a business for less than two (2) years;

41                   (B) in a bona fide retail operation that is for sale to any  
 42                   qualified independent person at a fair and reasonable price; or



- 1 (C) in a bona fide relationship in which an independent person  
 2 has made a significant investment subject to loss in the  
 3 business operation and can reasonably expect to acquire  
 4 majority ownership or managerial control of the business on  
 5 reasonable terms and conditions.
- 6 (4) Require a dealer, as a condition of granting or continuing a  
 7 franchise, approving the transfer of ownership or assets of a new  
 8 motor vehicle dealer, or approving a successor to a new motor  
 9 vehicle dealer to:
- 10 (A) construct a new dealership facility;  
 11 (B) modify or change the location of an existing dealership; or  
 12 (C) grant the manufacturer or distributor control rights over  
 13 any real property owned, leased, controlled, or occupied by the  
 14 dealer.
- 15 (5) Prohibit a dealer from representing more than one (1) line  
 16 make of motor vehicles from the same or a modified facility if:
- 17 (A) reasonable facilities exist for the combined operations;  
 18 (B) the dealer meets reasonable capitalization requirements for  
 19 the original line make and complies with the reasonable  
 20 facilities requirements of the manufacturer or distributor; and  
 21 (C) the prohibition is not justified by the reasonable business  
 22 considerations of the manufacturer or distributor.
- 23 Subdivisions (3) through (5) do not apply to recreational vehicle  
 24 manufacturer franchisors.
- 25 (b) This section does not prohibit the enforcement of a voluntary  
 26 agreement between the manufacturer or distributor and the franchisee  
 27 where separate and valuable consideration has been offered and  
 28 accepted.

